

REMARKS

Claims 26-36 are pending.

The rejection under 35 U.S.C. §102(e)

Claims 26-36 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,548,069 (Hymas).

The Applicants respectfully traverse this rejection because Hymas is not prior art. Submitted herewith is Exhibit A, a Decision on Petition issued by the U.S. Patent and Trademark Office on December 12, 2007. The Decision indicates that the present application has now satisfied the formal requirements for claiming the November 8, 2000 priority date of U.S. Patent Application Serial No. 09/708,352.

The present claims are entitled to the November 8, 2000 priority date of U.S. Patent Application Serial No. 09/708,352 for substantive reasons as well. The present application is a divisional of a divisional of U.S. Patent Application Serial No. 09/708,352. Thus, the specification of U.S. Patent Application Serial No. 09/708,352 is the same as the present specification and contains support under 35 U.S.C. §120 for the present claims.

Hymas arose from an application that was filed February 3, 2001. Thus, the earliest date Hymas is entitled to for the purposes of 35 U.S.C. §102(e) is February 3, 2001. Since the present claims are entitled to a priority date of November 8, 2000, Hymas is not prior art under 35 U.S.C. §102(e) to the present claims.

In view of the above, it is respectfully requested that this rejection be withdrawn.


The time for responding to the Office Action was set for December 26, 2007.

Enclosed herewith is a Petition for the Extension of Time under 37 C.F.R. § 1.136(a) for a period sufficient to permit the filing of this response. Please charge any corresponding fees for the Petition to Kenyon & Kenyon's Deposit Account No. 11-0600.

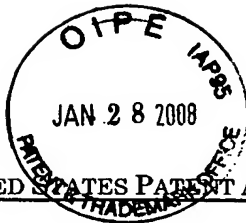
The Applicants hereby make a Conditional Petition for any relief available to correct any defect seen in connection with this filing, or any defect seen to be remaining in this application after this filing. The Commissioner is authorized to charge Kenyon & Kenyon's Deposit Account No. 11-0600 for the Petition fee and any other fees required to effect this Conditional Petition.

Dated: January 24, 2008

Respectfully submitted,


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EX-A

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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ONE BROADWAY
NEW YORK NY 10004

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OFFICE OF PETITIONS

In re Application of
Joan D. Leonard
Application No. 10/825,391
Filed: April 14, 2004
Attorney Docket No. 12780/103

DECISION ON PETITION
UNDER 37 CFR 1.78(a)(3) AND
UNDER 37 CFR 1.78(a)(6)

This is a decision in response to the renewed petition, filed October 1, 2007, which is being treated under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) to accept an unintentionally delayed claim under 35 U.S.C. §§120 and 119(e) for the benefit of the prior-filed applications set forth in the concurrently filed amendment. It is noted that petitioner suggests that an Application Data Sheet has been included, but none was found.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional where there is a question whether the delay was unintentional.

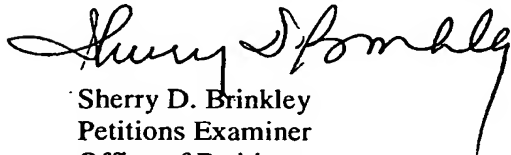
All requirements being met, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) to accept an unintentionally delayed claim for priority under 35 U.S.C. §§ 120 and § 119(e), is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) should not be construed as meaning that the application is entitled to the benefit of the filing date of the prior-filed applications. In order for the application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §120 and 1.78(a)(1) and (a)(2) and under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed applications, accompanies this decision on petition.

Any questions concerning this matter may be directed to Sherry D. Brinkley at (571) 272-3204

This application is being forwarded to Technology Center Art Unit 1645 for further consideration by the examiner of the claim under 35 U.S.C. § §120 and 37 CFR 1.78(a)(2) for the benefit of the prior-filed nonprovisional applications, and for consideration of the claim under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(5) for the benefit of the prior-filed provisional application.



Sherry D. Brinkley
Petitions Examiner
Office of Petitions

ATTACHMENT : Corrected Filing Receipt